# California Public Utilities Commission (CPUC)

# Application for the Broadband, Equity, Access, and Deployment (BEAD) Grant Program

# 7.2A Letter of Commitment Template

The template below meets the requirements established in California’s Initial Proposal Volume 2 (IPv2):

“Applicants will be required to certify that they are aware of and understand the letter of credit or performance bond obligations and processes further certify that they have the qualifications and resources to comply with the requirements. Applicants that elect to provide letters of credit will be required to present a letter of commitment from a qualified financial institution. The CPUC will define a “qualified financial institution” as one that meets the program rules for the FCC’s RDOF program (47 C.F.R. §54.804(c)(2)) or a credit union that is (a) is insured by the National Credit Union Administration; and (b) has a credit union safety rating issued by Weiss of B− or better. This definition presents the applicants with a choice of different types of financial institutions to request a letter of commitment and ultimately fund the required letter of credit.

This letter of commitment must describe the type of financial institution that is making the commitment (i.e., using the categories in 47 C.F.R. §54.804(c)(2) or a qualifying credit union). The letter of commitment must also state that the financial institution stands ready to issue an irrevocable standby letter of credit for the proposed project in the required amount and must specify the expected amount. The financial institution must also state that it has reviewed the model letter of credit and is prepared to comply with all terms and conditions for the letter of credit under this program.”[[1]](#footnote-2)

The CPUC provides the applicant with the following options for structuring the letter of credit:

* Comply with the letter of credit requirement at no less than 25 percent of the subaward amount as outlined in the initial NTIA guidance; or
* Provide performance bonds equal to 100 percent of the BEAD subaward amount; or
* Choose to have their letter of credit or performance bond obligation progressively reduced (from 25 percent or 100 percent of the subaward amount) with completion of deployment milestones based on a percent buildout completion schedule provided by the CPUC. If applicants do not choose an alternative, they will be subject to the letter of credit requirement at no less than 25 percent as outlined in the NTIA guidance.
* Request that the committed amount for the letter of credit or the performance bond be reduced where 1) funding will be issued on a reimbursable basis and the CPUC has implemented all other subgrantee accountability measures as set out in the BEAD NOFO rules (Section IV.C.1.b); 2) funding will be on a reimbursable basis for periods of no more than six months; and 3) the letter of credit or performance bond remains at 10 percent of the subaward until the subgrantee successfully demonstrates 100 percent project or completion or the period of performance for the subaward has ended.

## References:

The model letter of credit in this template is based on the Federal Communications Commission’s (FCC) illustrative form of letter of credit for the Rural Digital Opportunity Fund (RDOF) program, as mentioned in the BEAD NOFO and provided for in California’s IPv2:

California IPv2: <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M542/K040/542040660.PDF>

BEAD NOFO: <https://broadbandusa.ntia.doc.gov/sites/default/files/2022-05/BEAD%20NOFO.pdf>

FCC’s adopted RDOF framework: <https://docs.fcc.gov/public/attachments/FCC-20-5A1.docx> (see Appendix C for sample letter of credit)

NTIA BEAD Letter of Credit Waiver: [BEAD Letter of Credit Waiver | BroadbandUSA](https://broadbandusa.ntia.gov/funding-programs/policies-waivers/BEAD-Letter-of-Credit-Waiver)

[FINANCIAL INSTITUTION LETTERHEAD]

**Commitment for IRREVOCABLE STANDBY LETTER OF CREDIT**

[FINANCIAL INSTITUTION NAME]

[FINANCIAL INSTITUTION ADDRESS]

[DATE]

[FINANCIAL INSTITUTION] has reviewed the model Letter of Credit to support [APPLICANT]’s broadband deployment project under the Broadband Equity, Access, and Deployment (BEAD) Program Notice of Funding Opportunity, issued by the National Telecommunications and Information Administration of the U.S. Department of Commerce on May 13, 2022, pursuant to the Infrastructure Investment and Jobs Act of November 15, 2021, as administered by the California Public Utilities Commission (CPUC) for the State of California and is prepared to comply with all terms and conditions for the Letter of Credit under this program.

[FINANCIAL INSTITUTION] stands ready to issue an irrevocable standby Letter of Credit for the proposed project in the required amount of ($\_\_\_\_\_\_\_\_) if [APPLICANT] is selected as a subgrantee of the CPUC BEAD Program.

The Letter of Credit will be supplied to the CPUC prior to subgrant execution between the CPUC and [APPLICANT]. Documentation for the model Letter of Credit Template is shown in the attached pages.

I have reviewed 47 C.F.R § 54.804(c)(2) and certify [FINANCIAL INSTITUTION NAME] is eligible to issue this IRREVOCABLE STANDBY LETTER OF CREDIT.

I am authorized by [FINANCIAL INSTITUTION NAME] to issue this IRREVOCALBE STANDBY LETTER OF CREDIT.

[SIGNATURE]

[NAME OF SIGNATORY]

[TITLE OF SIGNATORY]

[FINANCIAL INSTITUTION NAME]

## Illustrative form of Letter of Credit

[Subject to Issuing Financial Institution Requirements]

No. \_\_\_\_\_\_\_\_\_\_

[Name and Address of Issuing Financial Institution]

[Date of Issuance]

[AMOUNT]

[EXPIRATION DATE]

BENEFICIARY

California Public Utilities Commission

Attn: Darcie L. Houck, Commissioner of the California Public Utilities Commission

505 Van Ness Avenue,

San Francisco, CA 94102

LETTER OF CREDIT PROVIDER

[Subgrantee Name]

[Address]

To Whom It May Concern:

We hereby establish, at the request and for the account of [Subgrantee], in your favor, as required under the Broadband Equity, Access, and Deployment (BEAD) Program Notice of Funding Opportunity (NOFO), issued by the National Telecommunications and Information Administration (NTIA) of the U.S. Department of Commerce (DOC) on May 13, 2022, pursuant to the Infrastructure Investment and Jobs Act (IIJA) of November 15, 2021, as administered by the California Public Utilities Commission (CPUC) for the State of California, our Irrevocable Standby Letter of Credit No. \_\_\_\_\_\_\_\_\_, in the amount of [State amount of Letter of Credit in words and figures. NOTE: The amount of the Letter of Credit shall increase or decrease/additional letter(s) of credit shall be issued as additional funds are disbursed pursuant to the terms of the Subgrant Agreement], expiring at the close of business at our office described in the following paragraph, on [the date which is \_\_\_ years from the date of issuance/or the date which is one year from the date of issuance, provided the Issuing Financial Institution includes an evergreen clause that provides for automatic renewal unless the Issuing Financial Institution gives notice of non-renewal to the CPUC by a nationally recognized overnight delivery service, with copies to the DOC and the CPUC, at least sixty days but not more than 90 days prior to the expiry thereof], or such earlier date as the Letter of Credit is terminated by the CPUC (the “Expiration Date”). Capitalized terms used herein but not defined herein shall have the meanings accorded such terms in the BEAD NOFO and IIJA.

Funds under this Letter of Credit are available to you against your draft in the form attached hereto as Annex A, drawn on our office described below, and referring thereon to the number of this Letter of Credit, accompanied by your written and completed certificate signed by you substantially in the form of Annex B attached hereto. Such draft and certificates shall be dated the date of presentation or an earlier date, which presentation shall be made at our office located at [FINANCIAL INSTITUTION ADDRESS] and shall be effected either by personal delivery or delivery by a nationally recognized overnight delivery service. We hereby commit and agree to accept such presentation at such office, and if such presentation of documents appears on its face to comply with the terms and conditions of this Letter of Credit, on or prior to the Expiration Date, we will honor the same not later than the first business day after presentation thereof in accordance with your payment instructions. Payment under this Letter of Credit shall be made by check/wire transfer of Federal Reserve Bank of New York funds to the payee and for the account you designate, in accordance with the instructions set forth in a draft presented in connection with a draw under this Letter of Credit.

Partial drawings are not permitted under this Letter of Credit, except as provided for by NTIA Guidance. This Letter of Credit is not transferable or assignable in whole or in part.

This Letter of Credit shall be canceled and terminated upon receipt by us of the CPUC’s certificate purportedly signed by two (2) authorized representatives of the CPUC in the form attached as Annex C.

This Letter of Credit sets forth in full the undertaking of the Issuer, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein, except only the certificates and the drafts referred to herein and the ISP (as defined below); and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except for such certificates and such drafts and the ISP.

This Letter of Credit shall be subject to, governed by, and construed in accordance with, the International Standby Practices 1998, International Chamber of Commerce Publication No. 590 (the “ISP”), which is incorporated into the text of this Letter of Credit by this reference, and, to the extent not inconsistent therewith, the laws of the State of New York, including the Uniform Commercial Code as in effect in the State of New York. Communications with respect to this Letter of Credit shall be addressed to us at our address set forth below, specifically referring to the number of this Letter of Credit.

[NAME OF FINANCIAL INSTITUTION]

[FINANCIAL INSTITUTION SIGNATURE]

## Annex A: Form of Draft

To:  [Issuing Financial Institution]

DRAWN ON LETTER OF CREDIT No: \_\_\_\_\_\_\_\_\_\_\_\_\_\_

AT SIGHT

PAY TO THE ORDER OF THE CPUC BY [CHECK/WIRE TRANSFER OF FEDERAL RESERVE BANK OF NEW YORK]

FUNDS TO: \_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Account (\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_)

AS [BEAD REPAYMENT]

[AMOUNT IN WORDS] DOLLARS AND NO/CENTS

$[AMOUNT IN NUMBERS]

California Public Utilities Commission (CPUC)

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

## Annex B: Draw Certificate

The undersigned hereby certifies to [Name of Financial Institution] (the “Financial Institution”), with reference to (a) Irrevocable Standby Letter of Credit No. [Number] (the “Letter of Credit”) issued by the Financial Institution in favor of the California Public Utilities Commission (CPUC); and (b) the Broadband Equity, Access, and Deployment (BEAD) Program Notice of Funding Opportunity (NOFO), issued by the National Telecommunications and Information Administration (NTIA) of the U.S. Department of Commerce on May 13, 2022, pursuant to the Infrastructure Investment and Jobs Act (IIJA) of November 15, 2021, pursuant to which [Name of Subgrantee] (the “LC Provider”) has provided the Letter of Credit (all capitalized terms used herein but not defined herein having the meaning stated in the BEAD NOFO), that:

[The Name of Subgrantee] has [describe the event that triggers the draw], and is evidenced by a letter signed by the [CPUC Director] or [his/her] designee, dated \_\_\_\_, 20\_\_, a true copy of which is attached hereto.] Accordingly, a draw of the entire amount of the Letter of Credit No. \_\_\_\_\_\_\_ is authorized.]

OR

[The CPUC certifies that given notice of non-renewal of Letter of Credit No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_ and failure of the account party to obtain a satisfactory replacement thereof, pursuant to the BEAD NOFO, the CPUC is entitled to receive payment of $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ representing the entire amount of Letter of Credit No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.]

IN WITNESS WHEREOF, the undersigned has executed this certificate as of [specify time of day] on the \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_.

California Public Utilities Commission (CPUC)

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

## Annex C: Certificate Regarding Termination of Letter of Credit

The undersigned hereby certifies to [Name of Financial Institution] (the “Financial Institution”), with reference to (a) Irrevocable Standby Letter of Credit No. [Number] (the “Letter of Credit”) issued by the Financial Institution in favor of the California Public Utilities Commission (CPUC) and (b) the Broadband Equity, Access, and Deployment (BEAD) Program Notice of Funding Opportunity (NOFO), issued by the National Telecommunications and Information Administration (NTIA) of the U.S. Department of Commerce (DOC) on May 13, 2022, pursuant to the Infrastructure Investment and Jobs Act (IIJA) of November 15, 2021, as administered by the CPUC for the State of California (all capitalized terms used herein but not defined herein having the meaning stated or described in the BEAD NOFO and IIJA), that:

(1) [include one of the following clauses, as applicable]

1. The BEAD NOFO has been fulfilled in accordance with the provisions thereof; or
2. [LC Provider/Subgrantee] has provided a replacement letter of credit satisfactory to the CPUC.

(2) By reason of the event or circumstance described in paragraph (1) of this certificate and effective upon the receipt by the Financial Institution of this certificate (countersigned as set forth below), the Letter of Credit is terminated.

IN WITNESS WHEREOF, the undersigned has executed this certificate as of the \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_.

California Public Utilities Commission (CPUC)

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

COUNTERSIGNED:

[INSERT]

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Its Authorized Signatory

1. BEAD Initial Proposal Volume II, CPUC, September 2024, <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M542/K040/542040660.PDF> (pages 58 - 59). [↑](#footnote-ref-2)